

COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915 (949) 644-3200 Fax: (949) 644-3229

www.newportbeachca.gov

CITY OF NEWPORT BEACH ZONING ADMINISTRATOR STAFF REPORT

June 27, 2013 Agenda Item No. 2

SUBJECT: Hula Dog Minor Use Permit - (PA2013-107)

2233 W. Balboa Boulevard, Unit 109Minor Use Permit No. UP2013-008

APPLICANT: Ken Kowalski

PLANNER: Benjamin M. Zdeba, Assistant Planner

(949) 644-3253, bzdeba@newportbeachca.gov

ZONING DISTRICT/GENERAL PLAN

• **Zone:** MU-W2 (Mixed-Use Water Related)

• General Plan: MU-W2 (Mixed-Use Water Related)

PROJECT SUMMARY

A minor use permit to convert an existing 930-square-foot, vacant commercial tenant space to a take-out service, limited eating and drinking establishment. The proposal includes seating for six patrons within a 426-square-foot customer area. No late hours (after 11:00 p.m.) or alcohol sales are proposed as part of this application.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Draft Zoning Administrator Resolution No. _ approving Minor Use Permit No. UP2013-008 No. (Attachment No. ZA 1).

DISCUSSION

 The subject property consists of a 13,124-square-foot, mixed-use building and is situated at the corner of West Balboa Boulevard and 23rd Street. The retail/commercial component, 10,400 square feet of the building, is divided into 11 suites, which are currently occupied by five retail stores and a small eating and drinking establishment (Tutti Frutti Frozen Yogurt). Four tenant spaces are currently vacant including the space proposed for the take-out service, limited use. The residential component includes two, small apartment units.

- The property is within the MU-W2 (Mixed-Use Water Related) Zoning District which applies to properties in which marine-related uses may be intermixed with general commercial, visitor-serving commercial and residential dwelling units on the upper floors. A minor use permit is required to establish an eating and drinking establishment take-out service, limited use when proposed within 500 feet, property line to property line, of any residential zoning district.
- The development is considered legal nonconforming (parking) because there are six existing parking spaces, where, based on a retail parking ratio of one space per 250 gross square feet, a total of 42 spaces (10,400/250 = 41.5 spaces) is required. The residential units each have a two-car garage which is consistent with the Zoning Code parking requirement.
- Pursuant to Chapter 20.38.060 (Nonconforming Parking), a nonconforming use in a nonresidential zoning district may be changed to a new use allowed in that zoning district without providing additional parking, provided no intensification or enlargement (e.g., increase in floor area, or lot area) occurs and the new use requires a parking rate of no more than one space per 250 square feet of gross building area. Pursuant to Chapter 20.40 (Off-Street Parking) the proposed eating and drinking establishment take-out service, limited use requires one parking space per 250 square feet and no intensification or enlargement is proposed; therefore, no additional parking is required.
- Staff believes the proposed eating and drinking establishment take-out service, limited use will be complementary to the other uses in the building and will serve residents and beach visitors.

ENVIRONMENTAL REVIEW

The project has been reviewed, and it qualifies for a categorical exemption pursuant to Section 15301 of the California Environmental Quality Act under Class 1 (Existing Facilities) of the Implementing Guidelines of the California Environmental Quality Act. The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use. The proposed project involves interior alterations to improve an existing commercial space to an eating and drinking establishment and the proposed use is comparable in intensity to the previous retail use.

PUBLIC NOTICE

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-

way and waterways) including the applicant and posted on the subject property at least 10 days before the scheduled hearing, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

APPEAL PERIOD:

An appeal may be filed with the Director of Community Development within 14 days following the date of action. For additional information on filing an appeal, contact the Planning Division at (949) 644-3200.

Prepared by:

Benjamin M. Zdeba Assistant Planner

GR/bmz

Attachments: ZA 1 Draft Resolution

ZA 2 Vicinity Map ZA 3 Project Plans

Attachment No. ZA 1

Draft Resolution

RESOLUTION NO. ZA2013-DRAFT

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING USE PERMIT NO. UP2013-008 FOR A TAKE-OUT SERVICE, LIMITED EATING AND DRINKING ESTABLISHMENT USE (HULA DOG) LOCATED AT 2233 WEST BALBOA BOULEVARD, SUITE 109 (PA2013-107)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

- 1. An application was filed by Ken Kowalski on behalf of Lolo Ono, LLC dba Hula Dog, with respect to property located at 2233 West Balboa Boulevard, Suite 109, and legally described as Lot 9, 10, 11, 12, 13, 14 and 15, in Block 22 of Newport Beach, as shown on map recorded in Book 3, Page 26, Miscellaneous Maps, Records of said Orange County requesting approval of a Minor Use Permit.
- 2. The applicant proposes to convert a 930-square-foot, currently vacant retail tenant space to a take-out service, limited eating and drinking establishment.
- 3. The subject property is located within the MU-W2 (Mixed-Use Water Related) Zoning District and the General Plan Land Use Element category is MU-W2 (Mixed-Use Water Related).
- 4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is MU-W (Mixed-Use Water Related)
- 5. A public hearing was held on June 27, 2013, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

- 1. The project has been reviewed, and it qualifies for a categorical exemption pursuant to Section 15301 of the California Environmental Quality Act under Class 1 (Existing Facilities) of the Implementing Guidelines of the California Environmental Quality Act.
- 2. The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use. The proposed project involves interior alterations to improve an existing commercial space to an eating and drinking establishment.

SECTION 3. REQUIRED FINDINGS.

Minor Use Permit

In accordance with Section 20.52.020.F of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

Finding

A. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding

- 1. The General Plan land use designation for the site is MU-W2 (Mixed-Use Water-Related), which applies to properties on or near the waterfront in which marine-related uses may be intermixed with general commercial, visitor-serving commercial and residential dwelling units on the upper floors.
- 2. The proposed eating and drinking establishment take-out service, limited use is consistent with the General Plan Mixed-Use Water Related (MU-W2) land use designation as it is intended to provide a service not only to visitors, but also to residents within the immediate area.
- 3. The subject property is not part of a specific plan area.

Finding

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding

- 1. The site is located within the Mixed-Use Water Related (MU-W2) Zoning District of the Newport Beach Zoning Code. The intent of this district is to provide for areas appropriate for a limited range of retail and service uses developed in one or more distinct centers oriented to serve primarily the needs of and maintain compatibility with residential uses in the immediate area. The proposed eating and drinking establishment take-out service, limited use is consistent with the land uses permitted within this zoning district and the conditions of approval will ensure that the use is compatible with the adjacent residential areas.
- 2. Pursuant to Section 20.22.020 (Table 2-9 Allowed Uses and Permit Requirements), the proposed project requires approval of a minor use permit.
- 3. Pursuant to Section 20.38.060 (Nonconforming Parking), a nonconforming use in a nonresidential zoning district may be changed to a new use allowed in that

zoning district without providing additional parking, provided no intensification or enlargement (e.g., increase in floor area, or lot area) occurs, and the new use requires a parking rate of no more than one space per 250 square feet of gross building area. Eating and drinking establishment – take-out service, limited uses have a required parking ratio of one space per 250 square feet of gross floor area.

4. The proposed project complies with the requirements of Section 20.38.060 (Nonconforming Parking) because the square footage of the existing suite will not be increased; the eating and drinking establishment – take-out service, limited use requires the same number of parking spaces required for the currently vacant retail space (890/250 = 4 spaces).

Finding

C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.

Facts in Support of Finding

- 1. The proposed project involves improvements to an existing vacant retail space to construct kitchen facilities for the new establishment. The six existing parking spaces on site will be maintained.
- 2. The proposed operation will consist of a kitchen, storage area, customer waiting area, and a restroom. A maximum of three employees will be present at any one time. The proposed hours of operation will be 11:00 a.m. to 11:00 p.m., 7 days per week.
- 3. The proposed eating and drinking establishment take-out service, limited use will be complementary to the other uses in the commercial building, which include retail stores and an eating and drinking establishment (Tutti Frutti Frozen Yogurt).
- 4. The proposed eating and drinking establishment will provide a convenience for residents of the neighborhood and visitors to the area and will not require the provision of additional parking spaces on the site.
- 5. The proposed eating and drinking establishment take-out service, limited use will be located within an existing commercial floor of a mixed-use building on a site located at the corner of West Balboa Boulevard and 23rd Street on the Balboa Peninsula. Due to its corner location, opportunities for on-street parking will be available along West Balboa Boulevard and 23rd Street in addition to the parking spaces provided on the site. Furthermore, its close proximity to the boardwalk is anticipated to yield walking and biking customers.

Finding

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding

- 1. The proposed project will be located in a tenant space within an existing commercial floor of a mixed-use building and will involve improvements of the space to construct kitchen facilities. There are no proposed changes to the site or the exterior of the building.
- 2. Adequate public and emergency vehicle access, public services, and utilities are provided on-site and are accessed from 23rd Street, West Ocean Front Alley, or the alley at the rear of the site.
- 3. The tenant improvements to the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding

- The project has been reviewed and this approval includes conditions to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
- The restrictions on seating and net public area prevent adverse traffic impacts for the surrounding residential and commercial uses.
- The proposed food service, eating and drinking establishment will help revitalize
 the project site and provide an economic opportunity for the property owner to
 update the tenant space, and provide additional services to the residents and
 visitors alike.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

- 1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2013-008 subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
- 2. This action shall become final and effective 14 days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 27TH DAY OF JUNE, 2013.

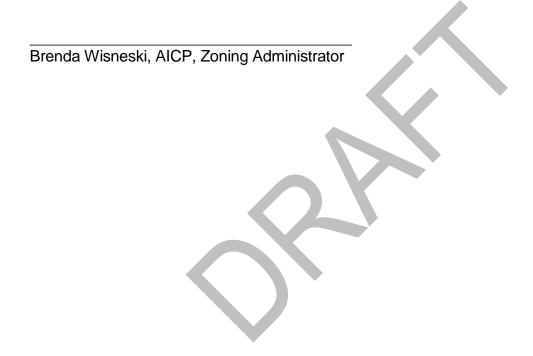


EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning Division Conditions

- 1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
- 2. Use Permit No. UP2013-008 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
- 3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
- 4. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
- 5. This minor use permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
- 6. The hours of operation for the establishment shall be limited to 10:00 a.m. through 11:00 p.m., daily.
- 7. The sale of alcohol shall not be permitted.
- 8. The maximum number of seats allowed within the eating and drinking establishment shall be six (6). No outdoor seating is permitted unless an amendment to this use permit is acquired.
- 9. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review and may require an amendment to this use permit or the processing of a new use permit.
- 10. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
- 11. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.

- 12. No outside paging system shall be utilized in conjunction with this establishment.
- 13. All trash shall be stored within the building or within the existing dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies.
- 14. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-ofway.
- 15. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
- 16. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
- 17. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
- 18. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of onsite media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
- 19. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Hula Dog MUP including, but not limited to, the Minor Use Permit No. UP2013-008 (PA2013-107). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Fire Department Conditions

20. A 2A 10BC fire extinguisher shall be placed in a conspicuous location.

21. Commercial cooking equipment that produces grease laden vapors shall be provided with a Type I Hood, and an automatic fire extinguishing system consisting of a wet chemical extinguishing system complying with UL 300.

Building Division Conditions

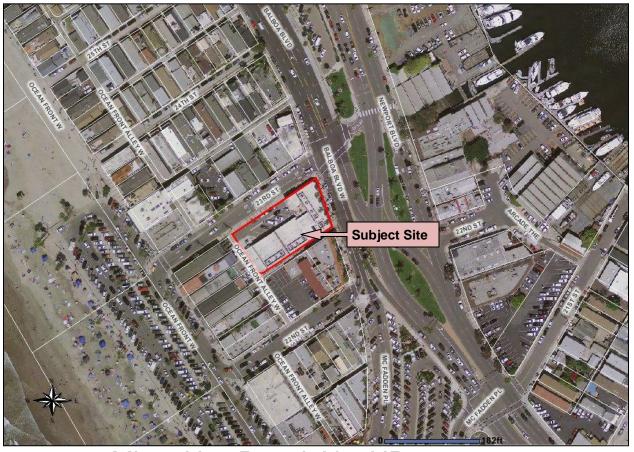
22. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.



Attachment No. ZA 2

Vicinity Map

VICINITY MAP

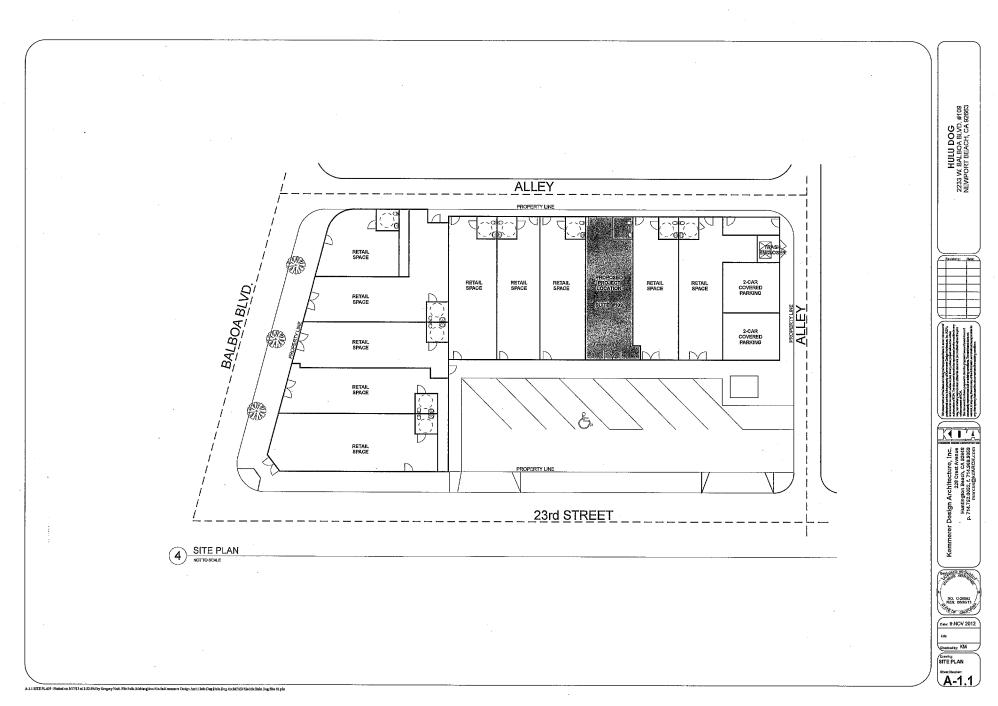


Minor Use Permit No. UP2013-008 PA2013-107

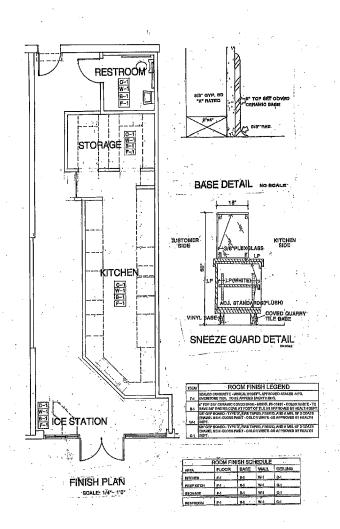
2233 W. Balboa Boulevard, Unit 109

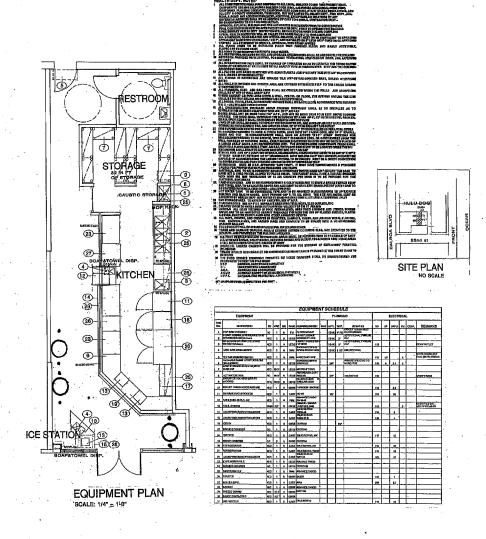
Attachment No. ZA 3

Project Plans



HEALTH DEPT.







HULA DOG Hawalian Style Not Dogs 2233 W. Balboa Biva. #109 Newport Beach, CA 92683



K1.00

DATE 5/13/2013